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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,920	08/10/2001	Christopher D. Ludwig	1017-015US01	5176
28863	7590	12/15/2005	EXAMINER	
SHUMAKER & SIEFFERT, P. A.			DUNHAM, JASON B	
8425 SEASONS PARKWAY			ART UNIT	
SUITE 105			PAPER NUMBER	
ST. PAUL, MN 55125			3625	

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/927,920	LUDWIG ET AL.	
	Examiner	Art Unit	
	Jason B. Dunham	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) 16-51, 61-67, 79, 80 and 84-87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 52-60, 68-78 and 81-83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>see office action</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 16-51, 61-67, 79-80, and 84-87 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected groups, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July 28th, 2005. Applicant asserted that there is no serious burden on the examiner to examine claims 1-87, however applicant noted that the independent claims differ greatly in scope. The examiner notes that there would be a burden in examining claims 1-87 as they are drawn to different classes and would require separate searches.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because of uneven shading in figures 12-23. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Information Disclosure Statement

The information disclosure statements (IDS) submitted on 12/03/01, 05/02/02, 10/21/02, 12/19/03, 01/12/04, 02/9/04, and 10/05/04 were filed after the mailing date of

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the application on 08/10/01. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4,7-15,52,54-56,58-60,68-78, and 81-82 are rejected under 35

U.S.C. 102(e) as being anticipated by Jorgenson (U.S. Patent Application

Publication No. 2002/0095232).

Referring to claim 1. Jorgenson discloses a method comprising:

- Receiving product movement information including a source location, a destination location, and a transportation device (Jorgenson: paragraph 35); and
- Generating a report indicating commingled products based on the product movement information (Jorgenson: paragraphs 61 & 71).

Referring to claim 2. Jorgenson further discloses a method wherein generating a report comprises determining a plurality of lots based on the product movement information (Jorgenson: paragraph 45).

Referring to claim 3. Jorgenson further discloses a method wherein determining a plurality of lots comprises assigning a new lot identifier when the products are commingled at a location (Jorgenson: paragraph 76).

Referring to claim 4. Jorgenson further discloses a method wherein the product movement information includes a designation of a farm, a field, and time harvested (Jorgenson: paragraph 44).

Referring to claim 7. Jorgenson further discloses a method comprising:

- Presenting a contract interface to define contracts between producers and customers based on order established by the customers (Jorgenson: figure 4).
- Providing a contract module to monitor contract generation and prevent a contract from being generated that is in excess of the order (Jorgenson: paragraphs 48 & 75, figures 4 & 10).

Referring to claim 8. Jorgenson further discloses a method comprising presenting an interface to define programs for tracking a given lot (Jorgenson: paragraph 7 & figure 4).

Referring to claim 9. Jorgenson further discloses a method comprising presenting an interface for receiving program information to establish checklists for procedures for moving and storing the given lot (Jorgenson: paragraph 45).

Referring to claim 10. Jorgenson further discloses a method comprising:

- Presenting an interface for receiving program information for establishing parameters for certifying actions taken in moving and storing the given lot (Jorgenson: paragraphs 41 & 61); and

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- And receiving an indication that the actions have been certified (Jorgenson: paragraphs 41 & 61).

Referring to claim 11. Jorgenson further discloses a method wherein the identification of the lot further comprises an indication of the character of the product (Jorgenson: paragraphs 42 & 84).

Referring to claim 12. Jorgenson further discloses a method wherein the product is a grown commodity and the indication of the character of the product includes the seed variety used to grow the commodity (Jorgenson: paragraph 31 & figure 19).

Referring to claim 13. Jorgenson further discloses a method wherein the product is a grown commodity and the indication of the character of the product includes an indication of whether the commodity is bio-engineered (Jorgenson: paragraphs 35 & 47).

Referring to claim 14. Jorgenson further discloses a method wherein the product is a grown commodity and the indication of the character of the product includes an indication of whether the commodity is conventionally grown (Jorgenson: paragraphs 35).

Referring to claim 15. Jorgenson further discloses a method wherein the product is a grown commodity and the indication of the character of the product includes an indication of whether the commodity is organically grown (Jorgenson: paragraphs 35 & 47).

Referring to claim 52. Claim 52 is rejected under the same rationale set forth above.

Referring to claim 54. Jorgenson further discloses a computer readable medium wherein the timing information includes a time the lot moves in and a time the lot moves out (Jorgenson: figures 3-6).

Referring to claim 55. Jorgenson further discloses a computer readable medium wherein the storage information includes an indication of whether the storage facility is clean and empty (Jorgenson: paragraphs 37,41, and 47).

Referring to claim 56. Jorgenson further discloses a computer readable medium wherein the movement information includes an indication of whether the transportation device is clean and empty (Jorgenson: paragraphs 37,41, and 47).

Referring to claims 58-60. Claims 58-60 are rejected under the same rationale set forth above.

Referring to claims 68-74. Claims 68-74 are rejected under the same rationale set forth above. Jorgenson discloses a system operating a web server (Jorgenson: paragraph 6) and electronically delivering certification documents (Jorgenson: paragraph 86).

Referring to claim 75. Jorgenson further discloses a system comprising an audit, certification, and testing module configured to allow transporters of the lot to identify a specific transportation device, a time the lot enters the transportation device, a time the lot leaves the transportation device, and a clean and empty status of the transportation device (Jorgenson: paragraphs 41,47, 67 & figure 9).

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Referring to claim 76. Jorgenson further discloses a system that is in communication with a business entity and receives movement information from the business entity (Jorgenson: paragraph 45).

Referring to claims 77-78. Claims 77-78 are rejected under the same rationale set forth above.

Referring to claims 81-82. Claims 81-82 are rejected under the same rationale set forth above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6,53,57, and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgenson (U.S. Patent Application Publication No. 2002/0095232) in view of Shortridge (U.S. Patent Application Publication No. 2001/0011437).

Referring to claims 5-6,53,57, and 83. Jorgenson discloses all of the above, but does not expressly disclose a method or computer-readable medium wherein a recall order is issued for all lots determined to have been commingled with a contaminated lot. Shortridge discloses a method and computer-readable medium for determining all lots that have been contaminated and tracing a lot's history thereby identifying any other lots that have been commingled with the given lot (Shortridge: paragraphs 29,43 and claim

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1). The examiner notes that Shortridge discloses testing for contamination of lots that would inherently be recalled if they were found to be contaminated. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the method and medium of Jorgenson to have included means for determining all lots that have been contaminated and tracing a lot's history thereby identifying any other lots that have been commingled with the given lot, as taught by Shortridge, in order to preserve the identity of non-genetically modified seeds (Shortridge: abstract).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason B. Dunham whose telephone number is 571-272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Patent Examiner
12/08/05

Mal
12/8/05

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